UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,951	10/22/2003	Michael J. Wookey	30014200-1102	6444

58328	7590	06/29/2006	

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EXAMINER
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ART UNIT	PAPER NUMBER
2114	

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>22 October 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-32</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-6, 8-17, 19-28 and 30-32</u> is/are rejected.

7)☒ Claim(s) <u>7, 18 and 29</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>22 October 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

- **Claims 1, 3b-6, 8-9, 11, 14-17, 19-20, 22, 25-28 and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Tryon, III, et al, U.S. Patent Number 7,006,947.**

- **Claim 2-3a, 10, 12-13, 21, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tryon, III, et al, U.S. Patent Number 7,006,947 as applied to claims 1, 11, and 22 above, and further in view of Ali, et al, U.S. Patent Number 7,036,049.**

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1, 3b-6, 8-9, 11, 14-17, 19-20, 22, 25-28 and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Tryon, III, et al, U.S. Patent Number 7,006,947.

3.   Regarding claim 1:

a.   Regarding the limitation of "asynchronously receiving information about a computer-based system," Tryon discloses a system that can gather data in a variable fashion. (Linens 19-23 of Column 3 and Lines 5-10 of Column 4).

b.   Regarding the limitation of "calculating an exposure level to failure of the computer-based system based on the received information," Tryon disclose a

system wherein an instruction is used to measure the collected data and to create a prediction of failure of the system. (Lines 20-25 of Column 3).

c.   Regarding the limitation of "determining a stability of the computer-based system based on the exposure level," Tryon discloses a system wherein the calculation are used to determine the level at which the system is about to fail. (Lines 10-16 of Column 3, see Figure 5F also).

d.   Regarding the limitation of "outputting a stability indication responsive to the determined stability," Tryon discloses a system wherein the predicted results are communicated to a user and displayed. (Lines 35-51 of Column 10).

4.   Regarding claim 3b, Tryon discloses a system that can gather data in a variable fashion. (Linens 19-23 of Column 3 and Lines 5-10 of Column 4). Tryon discloses a method with a first order reliability method. (Lines 60-61 of Column 6). Tryon discloses a system wherein the calculation are used to determine the level at which the system is about to fail. (Lines 10-16 of Column 3, see Figure 5F also).

5.   Regarding claim 4, Tryon discloses a method with a first order reliability method. (Lines 60-61 of Column 6). Tryon discloses a method with multiple rules methods for calculation the prediction to failure. (Lines 59-65 of Column 6).

6.   Regarding claim 5, Tryon discloses a method with a second order reliability method. (Lines 60-61 of Column 6).

7.   Regarding claim 6, Tryon disclose that the method of failure prediction is a computer implemented computer program product. (Lines 27-31 of Column 3).

8.   Regarding claim 8, Tryon discloses that the results are communicated across a data path to a user interface. Thereby the transmission of the data is a across a network to the user interface. (Lines 24-25 of Column 3 and Lines 33-40 of Column 10). Tryon

discloses a system wherein the data transmitted comes from the CPU that created the prediction to failure calculation. (Lines 23-33 of Column 10).

9.   Regarding claim 9, Tryon discloses a system with means for collecting data from hardware sensors. (Lines 9-12 of Column 10).

10.   Regarding claim 11:

   e.   Regarding the limitation of "asynchronously receiving information about a computer-based system," Tryon discloses a system that can gather data in a variable fashion. (Linens 19-23 of Column 3 and Lines 5-10 of Column 4).

   f.   Regarding the limitation of "calculating an exposure level to failure of the computer-based system based on the received information," Tryon disclose a system wherein an instruction is used to measure the collected data and to create a prediction of failure of the system. (Lines 20-25 of Column 3).

   g.   Regarding the limitation of "determining a stability of the computer-based system based on the exposure level," Tryon discloses a system wherein the calculation are used to determine the level at which the system is about to fail. (Lines 10-16 of Column 3, see Figure 5F also).

   h.   Regarding the limitation of "outputting a stability indication responsive to the determined stability," Tryon discloses a system wherein the predicted results are communicated to a user and displayed. (Lines 35-51 of Column 10).

11.   Regarding claim 14, Tryon discloses a system that can gather data in a variable fashion. (Linens 19-23 of Column 3 and Lines 5-10 of Column 4). Tryon discloses a method with a first order reliability method. (Lines 60-61 of Column 6). Tryon discloses a system wherein the calculation are used to determine the level at which the system is about to fail. (Lines 10-16 of Column 3, see Figure 5F also).

12.   Regarding claim 15, Tryon discloses a method with a first order reliability

method. (Lines 60-61 of Column 6). Tryon discloses a method with multiple rules

methods for calculation the prediction to failure. (Lines 59-65 of Column 6).

13.   Regarding claim 16, Tryon discloses a method with a second order reliability

method. (Lines 60-61 of Column 6).

14.   Regarding claim 17, Tryon disclose that the method of failure prediction is a

computer implemented computer program product. (Lines 27-31 of Column 3).

15.   Regarding claim 19, Tryon discloses that the results are communicated across a

data path to a user interface. Thereby the transmission of the data is a across a network

to the user interface. (Lines 24-25 of Column 3 and Lines 33-40 of Column 10). Tryon

discloses a system wherein the data transmitted comes from the CPU that created the

prediction to failure calculation. (Lines 23-33 of Column 10).

16.   Regarding claim 20, Tryon discloses a system with means for collecting data

from hardware sensors. (Lines 9-12 of Column 10).

17.   Regarding claim 22:

     i.   Regarding the limitation of "asynchronously receiving information about a

     computer-based system," Tryon discloses a system that can gather data in a

     variable fashion. (Linens 19-23 of Column 3 and Lines 5-10 of Column 4).

     j.   Regarding the limitation of "calculating an exposure level to failure of the

     computer-based system based on the received information," Tryon disclose a

     system wherein an instruction is used to measure the collected data and to

     create a prediction of failure of the system. (Lines 20-25 of Column 3).

     k.   Regarding the limitation of "determining a stability of the computer-based

     system based on the exposure level," Tryon discloses a system wherein the

calculation are used to determine the level at which the system is about to fail.
(Lines 10-16 of Column 3, see Figure 5F also).

l.   Regarding the limitation of "outputting a stability indication responsive to
the determined stability," Tryon discloses a system wherein the predicted results
are communicated to a user and displayed. (Lines 35-51 of Column 10).

m.   Regarding the limitation of "a processing unit that runs the program,"
Tryon discloses a system having a processor and a memory that are used in
predicting the failure. (Lines 38-51 of Column 4).

18.   Regarding claim 32:

n.   Regarding the limitation of "means for asynchronously receiving
information about a computer-based system," Tryon discloses a system that can
gather data in a variable fashion. (Linens 19-23 of Column 3 and Lines 5-10 of
Column 4).

o.   Regarding the limitation of "means for calculating an exposure level to
failure of the computer-based system based on the received information," Tryon
disclose a system wherein an instruction is used to measure the collected data
and to create a prediction of failure of the system. (Lines 20-25 of Column 3).

p.   Regarding the limitation of "means for determining a stability of the
computer-based system based on the exposure level," Tryon discloses a system
wherein the calculation are used to determine the level at which the system is
about to fail. (Lines 10-16 of Column 3, see Figure 5F also).

q.   Regarding the limitation of "means for outputting a stability indication
responsive to the determined stability," Tryon discloses a system wherein the
predicted results are communicated to a user and displayed. (Lines 35-51 of
Column 10).

19.   Regarding claim 25, Tryon discloses a system that can gather data in a variable
fashion. (Linens 19-23 of Column 3 and Lines 5-10 of Column 4). Tryon discloses a
method with a first order reliability method. (Lines 60-61 of Column 6). Tryon discloses a
system wherein the calculation are used to determine the level at which the system is
about to fail. (Lines 10-16 of Column 3, see Figure 5F also).

20.   Regarding claim 26, Tryon discloses a method with a first order reliability
method. (Lines 60-61 of Column 6). Tryon discloses a method with multiple rules
methods for calculation the prediction to failure. (Lines 59-65 of Column 6).

21.   Regarding claim 27, Tryon discloses a method with a second order reliability
method. (Lines 60-61 of Column 6).

22.   Regarding claim 28, Tryon disclose that the method of failure prediction is a
computer implemented computer program product. (Lines 27-31 of Column 3).

23.   Regarding claim 30, Tryon discloses that the results are communicated across a
data path to a user interface. Thereby the transmission of the data is a across a network
to the user interface. (Lines 24-25 of Column 3 and Lines 33-40 of Column 10). Tryon
discloses a system wherein the data transmitted comes from the CPU that created the
prediction to failure calculation. (Lines 23-33 of Column 10).

24.   Regarding claim 31, Tryon discloses a system with means for collecting data
from hardware sensors. (Lines 9-12 of Column 10).

Claim Rejections - 35 USC § 103

25.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to
> be patented and the prior art are such that the subject matter as a whole would have been
> obvious at the time the invention was made to a person having ordinary skill in the art to which

said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

26.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

27.   Claim 2-3a, 10, 12-13, 21, and 23-24 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Tryon, III, et al, U.S. Patent Number 7,006,947 as applied to

claims 1, 11, and 22 above, and further in view of Ali, et al, U.S. Patent Number

7,036,049.

28.   Regarding claim 2, Tryon teaches calculating the probabilistic analysis to

determine the variation in the system response. Tryon does not teach a system for

calculating the confidence level of the exposure level. However, Ali teaches of a system

that a calculation is performed to determine the severity of the fault condition and raises

an alarm level each time a threshold value is crossed. (Lines 20-40 of Column 11). It

would have been obvious to one of ordinary skill in the art at the time of the invention to

combine the failure prediction of Tryon with the severity of failure of Ali. One would have

been inclined to combine the art because Tryon teaches of a need for more accurate

prediction of failure use mathematical analysis. (Lines 30-35 of Column 4). Ali fulfils the

need by uses the error log to determine if the error have caused a failure to cross the

threshold to the next level of severity. (Lines 33-40 of Column 11).

29.   Regarding claim 3a, Ali discloses a method of calculating severity of failure

wherein the severity increase when a threshold value is crossed. (Lines 33-40 of

Column 11).

30.   Regarding claim 10:

r.   Regarding the limitations of "receiving an information about a computer-
based system by subscribing to the information; determining whether the
information identifies a potential problem with the computer-based system,"
Tryon discloses a system that can gather data in a variable fashion. (Linens 19-
23 of Column 3 and Lines 5-10 of Column 4). The information collected is used
to predict that failure of the system. (Lines 11-12 of Column 3).

s.   Regarding the limitation of "calculating an exposure level to failure of the
computer-based system based on the received information," Tryon disclose a
system wherein an instruction is used to measure the collected data and to
create a prediction of failure of the system. (Lines 20-25 of Column 3).

t.   Regarding the limitation of "determining a stability of the computer-based
system based on the exposure level," Tryon discloses a system wherein the
calculation are used to determine the level at which the system is about to fail.
(Lines 10-16 of Column 3, see Figure 5F also).

u.   Regarding the limitation of "publishing a stability indication responsive to
the determined stability," Tryon discloses a system wherein the predicted results
are communicated to a user and displayed. (Lines 35-51 of Column 10).

v.   Regarding the limitation of "calculating a confidence level of the exposure
level, the confidence level having an increased value for an increased number of
identifications of the potential problem," Tryon teaches calculating the
probabilistic analysis to determine the variation in the system response. Tryon
does not teach a system for calculating the confidence level of the exposure
level. However, Ali teaches of a system that a calculation is performed to
determine the severity of the fault condition and raises an alarm level each time a

threshold value is crossed. (Lines 20-40 of Column 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the failure prediction of Tryon with the severity of failure of Ali. One would have been inclined to combine the art because Tryon teaches of a need for more accurate prediction of failure use mathematical analysis. (Lines 30-35 of Column 4). Ali fulfils the need by uses the error log to determine if the error have caused a failure to cross the threshold to the next level of severity. (Lines 33-40 of Column 11).

31.   Regarding claim 12, Tryon teaches calculating the probabilistic analysis to determine the variation in the system response. Tryon does not teach a system for calculating the confidence level of the exposure level. However, Ali teaches of a system that a calculation is performed to determine the severity of the fault condition and raises an alarm level each time a threshold value is crossed. (Lines 20-40 of Column 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the failure prediction of Tryon with the severity of failure of Ali. One would have been inclined to combine the art because Tryon teaches of a need for more accurate prediction of failure use mathematical analysis. (Lines 30-35 of Column 4). Ali fulfils the need by uses the error log to determine if the error have caused a failure to cross the threshold to the next level of severity. (Lines 33-40 of Column 11).

32.   Regarding claim 13, Ali discloses a method of calculating severity of failure wherein the severity increase when a threshold value is crossed. (Lines 33-40 of Column 11).

33.   Regarding claim 21:

w.   Regarding the limitations of "receiving an information about a computer-based system by subscribing to the information; determining whether the

information identifies a potential problem with the computer-based system,"

Tryon discloses a system that can gather data in a variable fashion. (Linens 19-

23 of Column 3 and Lines 5-10 of Column 4). The information collected is used

to predict that failure of the system. (Lines 11-12 of Column 3).

x.   Regarding the limitation of "calculating an exposure level to failure of the

computer-based system based on the received information," Tryon disclose a

system wherein an instruction is used to measure the collected data and to

create a prediction of failure of the system. (Lines 20-25 of Column 3).

y.   Regarding the limitation of "determining a stability of the computer-based

system based on the exposure level," Tryon discloses a system wherein the

calculation are used to determine the level at which the system is about to fail.

(Lines 10-16 of Column 3, see Figure 5F also).

z.   Regarding the limitation of "publishing a stability indication responsive to

the determined stability," Tryon discloses a system wherein the predicted results

are communicated to a user and displayed. (Lines 35-51 of Column 10).

aa.   Regarding the limitation of "calculating a confidence level of the exposure

level, the confidence level having an increased value for an increased number of

identifications of the potential problem," Tryon teaches calculating the

probabilistic analysis to determine the variation in the system response. Tryon

does not teach a system for calculating the confidence level of the exposure

level. However, Ali teaches of a system that a calculation is performed to

determine the severity of the fault condition and raises an alarm level each time a

threshold value is crossed. (Lines 20-40 of Column 11). It would have been

obvious to one of ordinary skill in the art at the time of the invention to combine

the failure prediction of Tryon with the severity of failure of Ali. One would have

been inclined to combine the art because Tryon teaches of a need for more

accurate prediction of failure use mathematical analysis. (Lines 30-35 of Column

4). Ali fulfils the need by uses the error log to determine if the error have caused

a failure to cross the threshold to the next level of severity. (Lines 33-40 of

Column 11).

34.   Regarding claim 23, Tryon teaches calculating the probabilistic analysis to

determine the variation in the system response. Tryon does not teach a system for

calculating the confidence level of the exposure level. However, Ali teaches of a system

that a calculation is performed to determine the severity of the fault condition and raises

an alarm level each time a threshold value is crossed. (Lines 20-40 of Column 11). It

would have been obvious to one of ordinary skill in the art at the time of the invention to

combine the failure prediction of Tryon with the severity of failure of Ali. One would have

been inclined to combine the art because Tryon teaches of a need for more accurate

prediction of failure use mathematical analysis. (Lines 30-35 of Column 4). Ali fulfils the

need by uses the error log to determine if the error have caused a failure to cross the

threshold to the next level of severity. (Lines 33-40 of Column 11).

35.   Regarding claim 24, Ali discloses a method of calculating severity of failure

wherein the severity increase when a threshold value is crossed. (Lines 33-40 of

Column 11).

Claim Objections

36.   The numbering of claims is not in accordance with 37 CFR 1.126 which requires

the original numbering of the claims to be preserved throughout the prosecution. When

claims are canceled, the remaining claims must not be renumbered. When new claims

are presented, they must be numbered consecutively beginning with the number next

following the highest numbered claims previously presented (whether entered or not).

37.   Please correct the claim numbering issue with the duplicate claim 3's.

There are two claim "3"s. The first claim three above is referred to as claim 3a. The

second claim three is referred to above as claim 3b.

Allowable Subject Matter

38.   Claim 7, 18, and 29 objected to as being dependent upon a rejected base claim,

but would be allowable if rewritten in independent form including all of the limitations of

the base claim and any intervening claims.

Conclusion

39.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to **Tim Bonura.**

> o   The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.

> o   The examiner can be reached at: **571-272-3654**.

40.   If attempts to reach the examiner by telephone are unsuccessful, please contact

the examiner's supervisor, **Scott Baderman.**

> o   The supervisor can be reached on **571-272-3644.**

41.   The fax phone numbers for the organization where this application or proceeding

is assigned are:

> o   **703-872-9306 for all patent related correspondence by FAX.**

42.   Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov/. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

43.   Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the **receptionist** whose telephone number is: **571-272-**

2100.

44.   Responses should be mailed to:

> o   **Commissioner of Patents and Trademarks**
>
>   **P.O. Box 1450**
>
>   **Alexandria, VA 22313-1450**

tmb
June 23, 2006

BRYCE P. BONZO
PRIMARY EXAMINER